

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LINDA GRIFFITH and JEANETTE WENZL,  
on behalf of themselves, individually, and on  
behalf of the Providence Health & Services  
Cash Balance Retirement Plan,

Plaintiffs,

v.

PROVIDENCE HEALTH & SERVICES;  
RETIREMENT PLANS COMMITTEE;  
ELLEN WOLF; JOHN and JANE DOES 1-20,  
inclusive, MEMBERS OF THE RETIREMENT  
PLANS COMMITTEE; JOHN or JANE DOE  
21, PLAN DIRECTOR; HUMAN  
RESOURCES COMMITTEE OF THE BOARD  
OF DIRECTORS; JOHN and JANE DOES 22-  
40, inclusive, MEMBERS OF THE HUMAN  
RESOURCES COMMITTEE OF THE BOARD  
OF DIRECTORS; ROD HOCHMAN; BOARD  
OF DIRECTORS OF PROVIDENCE HEALTH  
& SERVICES; MICHAEL HOLCOMB;  
CHAUNCEY BOYLE; ISIAAH CRAWFORD;  
MARTHA DIAZ ASZKENAZY; PHYLLIS  
HUGHES; SALLYE LINER; KIRBY  
McDONALD; DAVE OLSEN; AL PARRISH;  
CAROLINA REYES; PETER J. SNOW;  
MICHAEL A. STEIN; CHARLES WATTS;  
BOB WILSON; JOHN and JANE DOES 41-50,  
inclusive,

Defendants.

No. 2:14-cv-01720-JCC

DECLARATION OF LYNN LINCOLN  
SARKO IN SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENT AGREEMENT

1 I, Lynn Lincoln Sarko, declare as follows:

2 1. I am an attorney licensed to practice law in the State of Washington. I am the  
3 managing partner at Keller Rohrback L.L.P. (“Keller Rohrback”), attorneys of record for  
4 Plaintiffs<sup>1</sup> and the proposed Settlement Class. I have personal knowledge of the facts set forth  
5 below and, if called as witness, I could and would testify competently thereto.

6 2. Class Counsel engaged in a detailed factual and legal investigation prior to filing  
7 their 70-page complaint. Such investigation included, among other things, a review and analysis  
8 of the Plan documents, Providence’s public disclosures, publicly-available financial statements,  
9 governmental filings, and information provided by the Plaintiffs themselves.

10 3. On January 26, 2015, Defendants filed a motion to dismiss the Complaint in this  
11 case. Plaintiffs opposed the motion and the motion was fully briefed. This briefing honed the  
12 legal issues in this case.

13 4. Class Counsel also engaged in substantial informal discovery while the motion to  
14 dismiss briefing was in progress. Plaintiffs propounded discovery requests on Defendants and  
15 Defendants produced approximately 2,100 pages of documents in response to those requests,  
16 including Plan documents, trust agreements, and communications with the Internal Revenue  
17 Service and Department of Labor.

18 5. After the Parties received the Ninth Circuit’s ruling in *Rollins v. Dignity Health*,  
19 830 F.3d 900 (9th Cir. 2016), another case concerning the applicability of the ERISA “church  
20 plan” exception to a pension plan sponsored by a healthcare system, the Parties filed a joint  
21 status report with the Court and stipulated to stay the case while the Parties engaged in  
22 Settlement negotiations.

23 6. The Settlement negotiations were extensive and took place over the course of  
24 many weeks. These negotiations were overseen by a third party JAMS mediator, Robert Meyer,  
25

26 <sup>1</sup> Capitalized terms not otherwise defined in this Declaration shall have the same meaning ascribed to them in the  
27 Class Action Settlement Agreement. A copy of the Settlement Agreement is attached as Exhibit 1 to Plaintiffs’  
Unopposed Motion for Preliminary Approval of Settlement Agreement (“Preliminary Approval Motion”).

1 Esq. Mr. Meyer has substantial experience mediating cases involving ERISA and retirement  
2 plan issues, including cases involving the church plan exception.

3 7. The settlement negotiations included an in-person mediation session in Seattle,  
4 Washington, as well as numerous calls and meetings. Both Class Counsel and Defendants'  
5 Counsel provided the mediator with their respective, confidential mediation statements and also  
6 exchanged multiple proposals and counter-proposals with each other concerning potential  
7 settlement terms. The mediator was in constant contact with the Parties both orally and in  
8 writing.

9 8. During the course of these negotiations, Class Counsel investigated the facts,  
10 circumstances, and legal issues associated with the allegations and defenses in this action. This  
11 investigation included, *inter alia*: (a) inspecting, reviewing, and analyzing documents produced  
12 by or otherwise relating to Defendants, the Plan, and the administration and funding of the Plan;  
13 (b) researching the applicable law with respect to the claims asserted in this case and the possible  
14 defenses thereto; and (c) researching and analyzing governmental and other publicly-available  
15 sources concerning the Defendants, the Plan, and the industry. Settlement negotiations were also  
16 informed by decisions concerning the church plan exemption that were issued by the Third,  
17 Seventh, and Ninth Circuit Courts of Appeals. *See Kaplan v. Saint Peter's Healthcare Sys.*, 810  
18 F.3d 175 (3d Cir. 2015); *Stapleton v. Advocate Health Care Network*, 817 F.3d 517 (7th Cir.  
19 2016); *Rollins, supra*.

20 9. As part of their investigation, Class Counsel also reviewed documents produced  
21 by Defendants for mediation purposes and reviewed actuarial information to confirm that the  
22 individuals listed in Schedule A to the Settlement Agreement are the population of individuals  
23 entitled to the Vesting Payment set forth in the Settlement Agreement.

24 10. After weeks of negotiations, the Parties finally reached an agreement in principle  
25 to settle the case, as reflected in a Term Sheet executed by all Parties effective September 26,  
26 2016.

1           11.     The Settlement Agreement now before the Court, Exhibit 1 to Plaintiffs’  
2 Unopposed Motion for Preliminary Approval of Settlement Agreement, is a comprehensive  
3 agreement based on the Term Sheet. It was executed by all Parties on October 20, 2016. The  
4 Settlement is the result of lengthy and sometimes contentious arm’s-length negotiations between  
5 the Parties. The process was thorough, adversarial, and professional.

6           12.     The two law firms representing the Plaintiffs and proposed Settlement Class in  
7 this case – Keller Rohrbach and Cohen Milstein Sellers & Toll, PLLC (“Cohen Milstein”) – are  
8 well-versed in class action litigation, are among the leading litigators of ERISA actions on behalf  
9 of plaintiffs, possess specific and extensive experience litigating the ERISA “church plan”  
10 exception, and have an in-depth knowledge of the unique legal and factual issues in this case.

11           13.     Keller Rohrbach has been litigating church plan cases since 2010. *See Thorkelson*  
12 *v. Publ’g House of the Evangelical Lutheran Church in Am.*, No. 10-1712 (D. Minn. filed Apr.  
13 21, 2010).

14           14.     Keller Rohrbach and Cohen Milstein serve as co-lead counsel in all three of the  
15 appellate court cases mentioned in ¶ 8 above concerning the applicability of the church plan  
16 exemption to hospital pension plans, and also represent these plaintiffs in opposing defendants’  
17 petitions to the Supreme Court in each of those cases. *See Rollins v. Dignity Health*, 830 F.3d  
18 900, *petition for cert. filed* (U.S. Aug. 29, 2016) (No. 16-241); *Kaplan v. Saint Peter’s*  
19 *Healthcare Sys.*, 810 F.3d 175, *petition for cert. filed* (U.S. July 18, 2016) (No. 16-86); *Stapleton*  
20 *v. Advocate Health Care Network*, 817 F.3d 517, *petition for cert. filed* (U.S. July 15, 2016) (No.  
21 16-74).

22           15.     In addition to these cases, Keller Rohrbach and Cohen Milstein serve, or have  
23 served, as co-counsel in roughly 20 cases pending across the country involving claims by other  
24 hospital systems that their plans qualify as “church plans.”

25           16.     A true and correct copy of the firm resume detailing the experience of Keller  
26 Rohrbach in ERISA cases and church plan cases is attached hereto as Exhibit A.

17. A true and correct copy of the firm resume detailing the experience of Cohen Milstein in ERISA cases and church plan cases is attached hereto as Exhibit B.

18. Based on their experience and the facts of this case, Class Counsel has concluded that the Settlement is fair, reasonable, and adequate.

19. A draft of the [Proposed] Order and Final Judgment for this case is attached hereto as Exhibit C.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is a true and correct.

Executed this 20th day of October, 2016, in Seattle, Washington.

KELLER ROHRBACK L.L.P.

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*Attorney for Plaintiffs*

**CERTIFICATE OF SERVICE**

I certify that on October 20, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Lynn Lincoln Sarko  
Lynn Lincoln Sarko